REMARKS/ARGUMENTS

Claims 1-80 and 115-117 were examined and rejected. Claims 81-114 were subject to a restriction requirement. The claims have been amended and cancelled as noted above. Reexamination and reconsideration of the claims, as amended, are respectfully requested.

As an initial matter, applicants note that all restricted claims have now been cancelled.

All examined claims were rejected as being anticipated over two different embodiments described in U.S. Patent No. 5,733,292 to Gustilo et al. Such rejection is respectfully traversed in part and overcome in part as discussed in detail below.

The Examiner asserts that Gustilo '292 discloses a device "comprising a stationary femoral member" and "an adjustable femoral member." Such characterization of Gustilo is inaccurate.

The principle disclosure of Gustilo relates to an adjustable tibia device having a lower portion 102 and an upper support 138. As best seen in Figs. 1, 5, and 27, the upper support is intended to emulate the grooves found in the proximal tibia, which grooves receive the medial and lateral posterior condyles of the distal femur.

While Gustilo '292 does disclose a femoral component 154 in Fig. 27, this femoral component does not include adjustable or moveable portions and is not intended to be actively utilized in the joint adjustment protocols described in the '292 Patent. Thus, Gustilo '292 cannot be relied on to teach an adjustable femoral component.

In order to even more clearly distinguish Gustilo, independent claims 1 and 42 have been amended to incorporate certain of the features previously set forth in dependent claims 7 and 47, respectively. In particular, both independent claims have been amended to recite that the adjustable femoral member of the femoral device of the present invention have "at least one

posterior condylar member disposed to contact a complementary depression in a tibial member when the knee is in flexion." This feature can be seen, for example, in Fig. 1D of the present application where the adjustable femoral member 17 includes the posterior condylar member 17' which is disposed at an approximately 90° angle in order to provide a surface for engaging the tibial insert 14 when the knee is inflexion, as show in Fig. 1C.

Since the device described in the Gustilo '292 Patent is intended to mimic or replace a proximal tibia, not a distal femur, the Gustilo device does not have and would not be expected to have an adjustable femoral component with a posterior condylar member or any equivalent structure.

For these reasons, it is respectfully submitted that all rejections stated over the Gustilo et al '292 Patent have now been overcome. It is pointed out that as the limitations added to independent claims 1 and 42 were, in essence, present previously in dependent claims 7 and 47, the present amendment does not raise new issues and should be addressed on its merits.

In view of the above amendments and remarks, applicants believe that all remaining claims are in condition for allowance and request that the application to issue at an early date.

If for any reason the Examiner believes that the telephone conference would in any way expedite prosecution of the subject application, the Examiner is invited to telephone the undersigned at (650) 326-2400.

Respectfully submitted,

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